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No. 06-1278

IN THE

Supreme Court of the United States

MARTIN A. ARMSTRONG,
Petitioner,

v.

JOSEPH R. GUCCIONE, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK, MARVIN D. MORRISON, WARDEN, METROPOLITAN CORRECTIONAL CENTER, AND ALAN M. COHEN,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT ALAN M. COHEN IN OPPOSITION

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1. Petitioner Martin A. Armstrong was held in civil contempt for refusing to comply with judicial orders requiring him to turn over certain corporate assets that he was found to hold as corporate custodian. He challenged his confinement on various bases, all of which were rejected by the district court on habeas review and by the U.S. Court of Appeal for the Second Circuit on appeal. Following its review, however, the court of appeal directed the district court to conduct another hearing to determine whether the confinement order remained coercive. On April 27, 2007, at the conclusion of

the evidentiary hearing (and after Armstrong filed a petition for a writ of certiorari), the district court terminated Armstrong's civil confinement, ruling that it could not find that the confinement was likely to continue to have coercive effect. Pet'r Supp. Br. 1. On April 10, 2007, Armstrong pleaded guilty to a criminal offense. He is now serving a 60 month sentence. *Id.*

2. Respondent Alan M. Cohen is the receiver for the companies Armstrong defrauded. Respondent Cohen initiated the civil contempt proceedings to compel production of corporate assets in Armstrong's possession and control as the corporate custodian of the companies in receivership. Pet. 3.

3. Armstrong's petition for a writ of certiorari is meritless and should be denied. The Brief for the Federal Respondents in Opposition (filed August 24, 2007), amply sets forth the reasons certiorari is not warranted here. As the federal respondents' submission demonstrates, the decision below (a) implicates no conflict among the circuits; (b) correctly resolves all the questions presented; and (c) presents a poor vehicle for review because Armstrong's confinement has been terminated. Fed. Opp'n Br. 7-17. Respondent Cohen agrees with and hereby adopts the reasons given by the federal respondents for opposing certiorari in this case.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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